IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1741 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE MR SHAH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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NUTANBEN SHRILAL JHA - Petitioner(s)

Versus

REGIONAL PROVIDENT FUND COMMISSIONER - Respondent(s)

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Appearance :

MR DIPAK R DAVE for Petitioner No(s).: 1.

MR MS RAO for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE MR SHAH

Date : 23/06/2005

ORAL JUDGMENT

Rule. Shri MS Rao, learned advocate waives service of Rule on behalf of the respondent. With the consent of

both the learned advocates for the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order/letter dated 28th January 2005 issued by the respondent and a further prayer is sought to restrain the respondent from coercively recovering amount pursuant to the order/letter dated 28th January 2005 from the petitioner.

3. It is the case of the petitioner that being aggrieved and dissatisfied with the order passed by the respondent authority under Section 7-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, the petitioner had preferred appeal before the appellate authority and he has filed an application for stay. However in view of the fact that there was no incumbent in the office of the appellate authority the application submitted by the petitioner for stay could not be heard and thereafter during pendency of hearing of the stay application the impugned order/letter has been issued. It is further submitted that if the order/letter is not stayed then the petitioner's stay application would become infructuous.

4. Shri MS Rao, learned advocate appearing on behalf of the respondent has opposed the present Special Civil Application. He has submitted that the petitioner had preferred appeal in the month of August 2002 along with an application for stay and as the office of the Appellate Authority was vacant between the period July 2003 and November 2004 there was no attempt on the petitioner to get any stay order during the period August 2002-July 2003 and when the authority issued the order to implement the order passed under Section 7-A of the Act the petitioner preferred the present Special Civil Application which is not required to be interfered with.

5. Heard the learned advocates appearing for the parties. This Court has issued Notice in the present Special Civil Application on 11thFebruary 2005 and has granted ad-interim relief restraining the

respondents from taking any coercive action to recover the amount from the petitioner pursuant to the order passed by the authority under Section 7A of the Act and the said ad-interim relief is in operation. It is not in dispute that the office of the appellate authority was vacant during the period July 2003-November 2004. It is the case of the petitioner that in the stay application the appellate authority issued the notice in August 2002/September 2002 and as the respondents were not served the application for stay could not be heard. Be that as it may, in view of the fact that the stay application submitted by the petitioner is pending before the appellate authority, if the following order is passed, it will meet the ends of justice:

(1) The appellate authority is directed to decide the dispose of the stay application submitted by the petitioner as early as possible preferably within the period of 2 months from the date of receipt of this order and until then the ad-interim relief granted earlier on 11th February 2005 is directed to be continued.

(2) It is, however, made clear that this Court has not expressed any opinion on merits as to whether the petitioner is entitled to interim relief or not. It is ultimately for the appropriate authority to consider the same in accordance with law and on merits. Merely because this Court has granted the ad-interim relief till the stay application is heard, it should not be construed that this Court has expressed any opinion on the merits of the case and granted interim relief.

6. With these observations and directions, the present Special Civil Application is disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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